

JAMES W. COLE

IBLA 81-568

Decided October 30, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 135817 through N MC 135846.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The mailing of evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the document is actually received by the proper BLM office before such date.

APPEARANCES: James W. Cole, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

James W. Cole has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 6, 1981, declaring the CC #1 through CC #30 mining claims, N MC 135817 through N MC 135846, abandoned and void for failure to file evidence of annual assessment work or notices of intention to hold the claims on or before December 30, 1980, pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR Subpart 3833.

Appellant's mining claims were located November 6, 1979, and filed for recordation with BLM on January 4, 1980. On January 5, 1981, BLM received "Proof of Labor" for the claims for the 1980 assessment year.

In his statement of reasons for appeal, appellant contends that he filed his proof of labor with the county recording office on December 17, 1980, and "mailed a copy of this to your office on the following day, December 18, 1980." The envelope in which his proof of labor was mailed to BLM is postmarked December 31, 1980.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires that the owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the claim. See 43 CFR 3833.2-1(c). Failure to file timely the required instrument is deemed conclusively to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976). See 43 CFR 3833.4(a).

The subject claims were located after October 21, 1976, in the calendar year 1979. Thus, one or the other of the required documents had to be filed prior to December 31, 1980, the year following the calendar year in which the claims were located.

[2] The mailing of a notice of intention to hold or evidence of annual assessment work before the due date is not sufficient to comply with the requirements of the statute unless the letter is actually received by the proper BLM office before such date. In this case despite appellant's contention to the contrary, the record indicates that the envelope containing the required document was not postmarked until after the due date.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association, 42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

In the absence of evidence that BLM did receive timely either evidence of annual assessment work or notices of intention to hold the claims, BLM properly declared the claims abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980); Gary L. Barton, 47 IBLA 386 (1980). The Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

